

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ELLEN GRUSKAS,

Plaintiff,

v.

CIV 15-0366 KBM

FOUR SEASONS RESORT,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiff's Application to Proceed in District Court without Prepaying Fees or Costs. See Doc. 2, filed May 1, 2015. For the reasons stated below, the Court will GRANT the Application. The Court will also order the Clerk of the Court to notify Defendant that an action has been commenced and request that Defendant waive service pursuant to Fed. R. Civ. P. 4(d).

Application to Proceed *in forma pauperis*

The statute for proceedings *in forma pauperis*, 28 U.S.C. § 1915(a), provides that the Court may authorize the commencement of any suit without prepayment of fees by a person who submits an affidavit that includes a statement of all assets the person possesses and that the person is unable to pay such fees.

When a district court receives an application for leave to proceed in forma pauperis, it should examine the papers and determine if the requirements of [28 U.S.C.] § 1915(a) are satisfied. If they are, leave should be granted. Thereafter, if the court finds that the allegations of poverty are untrue or that the action is frivolous or malicious, it may dismiss the case[.]

Menefee v. Werholtz, 368 Fed.Appx. 879, 884 (10th Cir. 2010) (citing *Ragan v. Cox*, 305 F.2d 58, 60 (10th Cir. 1962). “[A]n application to proceed *in forma pauperis* should be evaluated in light of the applicant's present financial status.” *Scherer v. Kansas*, 263

Fed.Appx. 667, 669 (10th Cir. 2008) (citing *Holmes v. Hardy*, 852 F.2d 151, 153 (5th Cir.1988)).

Plaintiff signed an affidavit in support of her Application in which she declares that she is unable to pay the costs of these proceedings and declares under penalty of perjury that the information in her Application is true. Plaintiff states that: (i) her average monthly income during the past year was \$189 in food stamps; (ii) her expected income next month is \$189 in food stamps; (iii) she is unemployed; (iv) her average monthly expenses exceed \$700; (v) she has \$2,000 in her checking account; and (vi) she states “I have filed bankruptcy – it is settled as of 2015.” The Court will grant Plaintiff’s Application to Proceed in District Court Without Prepaying Fees or Costs because Plaintiff is unemployed and her monthly expenses exceed her monthly income.

Service on Defendants

Section 1915 provides that the “officers of the court shall issue and serve all process, and perform all duties in [proceedings *in forma pauperis*]”).

28 U.S.C. § 1915(d). Rule 4 provides that:

At the plaintiff’s request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915 or as a seaman under 28 U.S.C. § 1916.

Fed. R. Civ. P. 4(c)(3). Because Plaintiff is authorized to proceed *in forma pauperis* under 28 U.S.C. § 1915, the Court will order the Clerk of the Court to notify Defendant that an action has been commenced and request that Defendant waive service pursuant to Fed. R. Civ. P. 4(d).

IT IS THEREFORE ORDERED that Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 2, filed May 1, 2015) is **GRANTED**.

IT IS ALSO ORDERED that the Clerk of the Court notify Defendant, using the address provided in the Complaint, Doc. 1 at 1, that an action has been commenced and request that Defendant waive service pursuant to Fed. R. Civ. P. 4(d). If Defendant does not return the waiver within 45 days after the request is sent, then the United States Marshal shall serve a copy of the Summons and Complaint on Defendant.

A handwritten signature in cursive script, appearing to read "Karen B. Molyn", is positioned above a horizontal line.

UNITED STATES CHIEF MAGISTRATE JUDGE